

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Squad #12	CCRB Case #: 201601167	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/12/2016 2:57 AM	Location of Incident: Rockaway Avenue and East New York Avenue	Precinct: 73	18 Mo. SOL 8/12/2017	EO SOL 8/12/2017	
Date/Time CV Reported Fri, 02/12/2016 9:26 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/12/2016 9:26 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Taveras	30195	953469	073 PCT
2. POM Rafael Figueroa	25243	948336	073 PCT
3. POM Nelson Reyes	27566	953309	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Taveras	Abuse: Police Officer Jonathan Taveras stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Nelson Reyes	Abuse: Police Officer Nelson Reyes stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Rafael Figueroa	Abuse: Police Officer Rafael Figueroa stopped the vehicle in which § 87(2)(b) was an occupant.	
D.POM Jonathan Taveras	Abuse: Police Officer Jonathan Taveras frisked § 87(2)(b)	
E.POM Jonathan Taveras	Abuse: Police Officer Jonathan Taveras searched § 87(2)(b)	
F.POM Jonathan Taveras	Abuse: Police Officer Jonathan Taveras searched the vehicle in which § 87(2)(b) was an occupant.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On February 12, 2016, § 87(2)(b) called the CCRB to file this complaint. At approximately 2:57 a.m. on February 12, 2016, § 87(2)(b) was driving in the vicinity of Rockaway Avenue and East New York Avenue in Brooklyn, when his car was stopped by PO Jonathan Taveras, PO Nelson Reyes, and PO Rafael Figueroa, all from the 73<sup>rd</sup> Precinct, for failing to signal and for having tinted windows (**Allegations A through C**). When the officers approached § 87(2)(b)'s car, PO Reyes said, "You know, I could have sworn we smelled marijuana coming from this car." § 87(2)(b) denied this. PO Taveras ordered § 87(2)(b) out of his car and frisked him (**Allegations D and E**). § 87(2)(b) was ordered to the car's rear and while there, he saw PO Taveras search inside of the car (**Allegation F**). PO Taveras then told § 87(2)(b) to have a nice day and to take care of his tints before the officers left without making an arrest or issuing any summonses. § 87(2)(g), § 87(4-b)

There is no video evidence in this case.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- As of May 10, 2016, § 87(2)(b) has not filed a Notice of Claim with the City of New York regarding this incident (Board Review 01)
- § 87(2)(b)

### Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Taveras, a three-year-member-of-the-service, has five prior and three pending CCRB complaints filed against him, with a total of 18 allegations, none of which were substantiated. § 87(2)(g)
- PO Reyes, a three-year-member-of-the-service, has seven prior CCRB complaints filed against him, with a total of 10 allegations, two of which were substantiated. In CCRB case number 201407314, the Board recommended that PO Reyes receive Command Discipline B for using excessive force, but the NYPD instead issued him Command Discipline A. In CCRB case number 201502327, the Board recommended that PO Reyes receive formalized training for an improper stop, but the NYPD instead issued him instructions.
- PO Figueroa, a six-year-member-of-the-service, has eight prior CCRB complaints filed against him with a total of 12 allegations, two of which were substantiated. In CCRB case number 201110498, the Board recommended that PO Figueroa be served with charges for improperly stopping and questioning an individual, but the NYPD took no disciplinary action.

### **Potential Issue**

§ 87(2)(b)'s friend, § 87(2)(b) drove past the scene in the middle of the incident and pulled over to observe § 87(2)(b)'s interaction with the officers. On March 1, 2016, § 87(2)(b) was called. He provided a brief phone statement (Board Review 04) and scheduled an interview for March 7, 2016. § 87(2)(b) failed to appear for that appointment, despite being sent an automated text message reminder. Between March 7, 2016 and March 24, 2016, four additional calls were placed to § 87(2)(b) and two unreturned letters were mailed to him. However, § 87(2)(b) has been uncooperative with this investigation.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

- PO Taveras could not recall which officer(s) made the decision to stop § 87(2)(b)'s car, and PO Figueroa could not recall much about this incident, but PO Reyes said it was a collective decision between the three officers to stop § 87(2)(b)'s car. Thus, one vehicle stop allegation has been pled to each officer.
- § 87(2)(b) provided partial shield number "3095" and said it belonged to the officer who alleged frisked and searched him and searched his car. § 87(2)(b) said he read the shield number off of the officer's shield during this incident. The partial shield number is consistent with PO Taveras' shield number, 30195, and PO Taveras acknowledged searching § 87(2)(b)'s car. Allegations D through F have thus been pled to him.

**Allegation A –Abuse of Authority: Police Officer Jonathan Taveras stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation B –Abuse of Authority: Police Officer Nelson Reyes stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation C –Abuse of Authority: Police Officer Rafael Figueroa stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that § 87(2)(b)'s car was pulled over by PO Taveras, PO Reyes, and PO Figueroa, all identified via investigation. § 87(2)(b) (Board Review 05) said he was told the car stop was for failing to signal and for tinted windows. § 87(2)(b) denied failing to signal, but he acknowledged that his rear driver side window, rear passenger side window, and rear window were darkly tinted. § 87(2)(b) did not know what percentage the tints were because he purchased the car used and the tints were already installed.

PO Taveras (Board Review 06), PO Reyes (Board Review 07), and PO Figueroa (Board Review 08) were all consistent in their assertion that § 87(2)(b)'s car was pulled over for its darkly tinted windows, although no officer recalled § 87(2)(b) failing to signal. PO Taveras said that during the incident, § 87(2)(b) showed him multiple summonses for the tinted windows and asked PO Taveras to give him a break, noting that he could not afford to have the tints removed. PO Taveras said he read off of one of the summonses that at least one of the car windows had five percent tints. PO Taveras noted this in his memo book (Board Review 09).

No person shall operate any motor vehicle upon any public highway, road, or street, the side windows of which on either side of the operator's seat are composed of, covered by, or treated with any material which has a light transmittance of less than seventy percent. New York State Vehicle and Traffic Law, Section 375.12a(2) (Board Review 10).

§ 87(2)(b), § 87(2)(g)

**Allegation D – Abuse of Authority: Police Officer Jonathan Taveras frisked § 87(2)(b)**

**Allegation E – Abuse of Authority: Police Officer Jonathan Taveras searched § 87(2)(b)**

§ 87(2)(b) said that he provided his license, registration, and insurance and was ordered him to exit his car by PO Taveras three times before he complied. § 87(2)(b) alleged that at the side of his car, PO Taveras patted down his front pants pockets and reached his hands inside of his two front jacket pockets. When PO Taveras felt an object inside of one of § 87(2)(b)'s jacket pockets, he asked him if it was a lighter and § 87(2)(b) said it was. PO Taveras did not remove any objects, including the lighter, from § 87(2)(b)'s pockets.

§ 87(2)(b) further alleged that PO Taveras then bent forward and with his open right palm, reached between § 87(2)(b)'s legs. Starting from § 87(2)(b)'s backside and working his way forward, PO Taveras allegedly patted down § 87(2)(b)'s groin area. This was described by § 87(2)(b) as a quick swiping action, which lasted seconds.

§ 87(2)(b) said he saw no officer make physical contact with § 87(2)(b) but § 87(2)(b) did not see the entire incident.

PO Taveras did not recall making any physical contact with § 87(2)(b) let alone the above described actions, and neither PO Reyes nor PO Figueroa could recall whether § 87(2)(b) was frisked or searched during this incident. § 87(2)(b), § 87(2)(g)

**Allegation F – Abuse of Authority: Police Officer Jonathan Taveras searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) said that when the officers first approached his car and he opened his door to speak to them because his window did not work, PO Reyes said, “You know, I could have sworn we smelled marijuana coming from this car.” § 87(2)(b) told PO Reyes that was impossible because he does not smoke marijuana. After the alleged frisk and search, § 87(2)(b) was ordered to his car’s rear. From that position, he said he saw PO Taveras enter § 87(2)(b)'s car via the driver side door. PO Taveras’ upper body was inside of the car for about one or two minutes. After the officers left, § 87(2)(b) returned to his car to discover that the contents of his closed center console had been removed, including paperwork, gloves, a hat, a GPS cord, and an “Obama” cell phone, and that an air freshener and a small tire air gage had been removed from an open compartment on the dashboard. The removed items were on the front passenger’s seat.

§ 87(2)(b) said he saw two officers inside of § 87(2)(b)'s car, but he could not hear any conversation at the scene from his position in his car approximately five car-lengths away.

PO Taveras acknowledged searching § 87(2)(b)'s car. He said that when he reached § 87(2)(b)'s window, he smelt an odor of marijuana emanating from the car so strong, that it led PO Taveras to believe that § 87(2)(b) had just finished smoking prior to the car stop. However, PO Taveras did not see anything lit nor did he see smoke.

At some point, PO Taveras could not recall when, he observed a marijuana cigarette in the visible cup holder of the center console and § 87(2)(b) eventually acknowledged smoking

marijuana for his bad back. PO Taveras ordered § 87(2)(b) to exit his car. He then entered the car and removed the marijuana cigarette, inspected it, and confirmed that it was in fact marijuana. PO Taveras was inside of § 87(2)(b)'s vehicle for approximately 60 to 90 seconds. During his CCRB interview, he initially said that he did nothing else inside of the car, but he later said he did not recall whether he conducted a further search of the car.

PO Taveras said he returned the marijuana cigarette to § 87(2)(b)'s car. He did not confiscate it because he then would have had to voucher it and if he did so, he would have had to attach it to a summons. After speaking with § 87(2)(b) PO Taveras did not believe the incident would amount to anything more than the discovery of a small amount of marijuana and that this was not worth anymore of his time, so no summonses was issued to § 87(2)(b).

PO Reyes acknowledged smelling marijuana emanating from the car and observing half a burnt marijuana cigarette inside, although he did not recall whether an officer entered the car. PO Figueroa, who said he did not smell anything emanating from § 87(2)(b)'s car because he was never in close proximity to it, did not recall seeing any officer search the car.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Squad: #12

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_

Title/Signature

Print

Date